

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF PAWTUCKET

v.

DONOVAN MARLER

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C.A. No. M12-0016  
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STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED

DECISION

PER CURIAM: Before this Panel on November 14, 2012—Chief Magistrate Guglietta (Chair, presiding), Judge Ciullo, and Magistrate Goulart, sitting—is Donovan Marler’s (Appellant) appeal from a decision of the Municipal Court, sustaining the charged violation of G.L. 1956 § 31-17-3, “Intersection with through highway-failure to yield.” The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

This violation arose from an automobile accident that occurred at the intersection of Garden Street and Harrison Street in Pawtucket. (Tr. at 3.) In the early morning of May 19, 2012, a vehicle driven by Douglas Szynoll crashed into Appellant’s vehicle as the Appellant inched out onto Garden Street. (Tr. at 5-6.) At the scene of the accident, the Appellant was cited by the Officer after the Officer had observed the damage to the vehicles and spoken to each person involved. (Tr. at 4.)

The trial commenced with the Officer testifying that he responded to the scene of the accident around 9:37 a.m. and began his investigation as soon as he arrived. (Tr. at 3.) The officer stated that he did not observe the accident but was able to see the damage

to the vehicles involved. (Tr. at 4.) In his investigation, he was able to speak with all of the interested parties, including an independent witness. Id.

Thereafter, the Appellant testified that he came to a complete stop when he reached the stop sign on Harrison Street. (Tr. at 10.) He then proceeded to make a right turn onto Garden Street. Id. As he was inching out, he noticed that there was a “. . . car parked on Garden Street that was too close to the corner . . . .” Id. Appellant’s witness, the passenger in his car at the time of the accident, then testified that the Appellant slowed down as he pulled out onto Garden Street because there was a car parked on the corner. (Tr. at 13.) As they proceeded onto Garden Street, a car slammed into Appellant’s vehicle. Id.

An independent witness, Tina Pelotti, testified at trial that she was driving behind the Appellant at the time of the accident. (Tr. at 6.) She further stated that the Appellant did stop at the stop sign, but the Appellant proceeded into the intersection even though a car was approaching. (Tr. at 7.) Later, Pelotti testified that the driver of the other vehicle involved in the accident was not speeding. (Tr. at 11.)

At the close of evidence, the trial judge recounted the aforementioned facts in her decision. In rendering her decision, the trial judge determined that the Appellant entered the intersection when it was not safe to do so. (Tr. at 15.) The trial judge found significant the testimony of the independent witness indicating that the other driver involved in the accident was not speeding. (Tr. at 15.) The judge found the independent witness credible and adopted the witness’s testimony. In summation, the trial judge sustained the violation. (Tr. at 16.) Appellant timely filed this appeal.

### Standard of Review

Pursuant to § 8-18-9, “[a]ny person desiring to appeal from an adverse decision of a municipal court . . . may seek review thereof pursuant to the procedures set forth in § 31-41.1-8.” Section 31-41.1-8 provides in pertinent part:

The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the judge or magistrate;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In reviewing a hearing judge’s decision pursuant to § 31-41.1-8, this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact.” Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge’s decision is supported by legally competent evidence or is affected by an error of law.” Link, 633 A.2d at 1348 (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). “In

circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision.” Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge's conclusions on appeal. See Janes, 586 A.2d at 537.

### Analysis

On appeal, Appellant argues that the decision made by the trial judge was not based on clear and convincing evidence and is affected by error of law. In particular, Appellant contends that our case law indicates that a driver on a dominant highway does not have the absolute right-of-way, and he or she is not relieved of exercising due care, even where his or her right-of-way is protected by a stop sign. Appellant deduces from this argument that the operator of the other vehicle, Douglas Szynoll, was not exercising due care by driving too fast and had a duty to yield as he approached the intersection, despite Mr. Szynoll’s presence on the dominant roadway.

In Link, our Supreme Court made clear that this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact.” Link, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not have an opportunity to view the live trial testimony of the witnesses, it would be impermissible to second-guess the trial judge’s “impressions as she . . . observe[d] [the witnesses.] [The trial judge] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[.]” Environmental Scientific Corp., 621 A.2d at 206.

Here, Appellant argues that the evidence elicited at trial was insufficient to sustain the violation. Appellant contends that the other driver did not exercise due care because he was driving too fast. However, Appellant's arguments relate to questions of fact that were heard and weighed by the trial judge at Appellant's trial.

This Panel's review is limited to determining whether the trial judge made an error of law or misapplied the evidence. See Link, 633 A.2d at 1348 (our Supreme Court held that this Panel's review is limited in scope). Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge did not abuse her discretion.

The trial judge's decision to sustain the charged violation is supported by legally competent evidence—the testimony of the independent witness indicating that the other driver was not speeding—which the trial judge chose to credit over the Appellant's. After hearing all of the evidence, the judge concluded that all of the elements of the violation were met and the judge went on to state that “. . . in this case, you have an independent witness who testified that she saw the vehicle, that she did not see any evidence of speed. . . [t]herefore, after trial, I do find the testimony of Mr. Szynoll and of the witness, Ms. Pelotti, to be credible . . .” (Tr. at 14-15.) The judge went on to state that “. . . the biggest testimony is the testimony of the independent witness.” (Tr. at 15.) Therefore, there was competent evidence presented at trial to support the trial judge's decision.

### Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial judge's decision was not erroneous in view of the reliable, probative, and substantial evidence on the whole record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.